IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.435 OF 2006

In

NOTICE OF MOTION NO.3217 OF 2004

In

SUIT NO.4913 OF 2000

Majid Ahmedbhai Oomerbhoy : Appellant
(Orig. Plaintiff)

V/s.

Rashid Sattar Oomerbhoy & Ors. : Respondents
(Orig. Defendants)

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Mr.S.H.Aney, Senior Counsel, with Mr.Simil Purohit i/b. M/s.Thakore Jariwala & Associates for the appellant.

Mr.Shailesh Shah with Mr.Sanjay Jain and Ms Deepa Mani i/b. M/s.S.K.Srivastava & Co., for respondent No.1.

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CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATE : AUGUST 28, 2006.

P.C.

1. We heard Senior Counsel for the appellant and counsel for respondent No.1 for sometime.

2. It is not in dispute that subsequent to the suit for

dissolution of the erstwhile firm M/s.Oomerbhoy, the Court Receiver who was appointed as Receiver of the partnership business and shops filed a suit, being Suit No.547 of 2003, praying for a perpetual injunction restraining, inter alia, the present appellant from using the trade mark ‘MASTAAN’ and "POSTMAN’ which was the property of the partnership firm. In the said suit, the Court Receiver took out a Notice of Motion in which an order of injunction on the ground of passing off and infringement came to be passed on 25/28th April, 2003. The order was carried in two separate appeals. Both these appeals came to be dismissed on 28th July, 2003. The present appellant filed Contempt Petition against the respondents alleging breach of the order of injunction. The present respondent No.1 set up the case that the respondents stopped manufacturing with effect from 22.7.2003 and the product was last sold on 31.7.2003. In this back drop, the Contempt Petition was dismissed by the learned single Judge on 28.9.2004. The order was carried in appeal to the Supreme Court by the present appellant, but without any success.

3. The appellant also took out Notice of Motion after the disposal of the Contempt Petition by the learned single Judge for the following reliefs:

"(a) That pending the hearing and final

disposal of the Suit, this Hon'ble Court be pleased to direct Defendant No.1 to deposit with the Prothonotary and Senior Master, High Court, Bombay a sum of at least Rs.62,20,00,000/- (Rupees Sixty Two Crores Twenty Lacs) and/or such amount that this Honourable Court deems fit;

(b) This Honourable Court be pleased to attach the bank accounts, movables and immovable properties belonging to the Defendant No.1.

(c) This Honourable Court be pleased to order the detention of Defendant No.1 in a civil prison.

(d) That Defendant No.1 be directed to disclose on oath his movables and immovable assets and that of the company M/s.R.R.Oomerbhoy Pvt. Ltd.

(e) That pending the hearing and final disposal of the Suit, this Hon'ble Court be pleased to direct the Prothonotary and Senior Master and/or any such person who this Honourable Court deems fit to take immediate action against those responsible for the manipulations carried out in the copy of the Affidavit-in-Reply of M/s.R.R.Oomerbhoy Pvt. Ltd. in Notice of Motion No.566 of 2003 in Suit No.547 of 2003 which is part of the Appeal Booklet in Appeal No.522 of 2003, including by filing of such criminal and/or civil proceedings as are permissible in law against those responsible, including Defendant No.1.

(f) That the Court Receiver, High Court Bombay and/or any other such fit person that this Honourable Court may deem suitable be directed to take immediate action, both criminal and civil against the 1st Defendant, M/s.R.R.Oomerbhoy Pvt. Ltd. and Mr.Riyad R. Oomerbhoy regarding the attempted illegal transfer of asset of the Trademark "IL POSTINO".

(g) That the Court Receiver, High Court, Bombay be directed to submit a report setting out the current status of the

registration of the Trademarks of the Suit Firm including the date till which the Trademarks have been renewed."

4. Insofar as the prayer made by the present appellant asking the present respondent No.1 (defendant No.1) to deposit a sum of Rs.62,20,00,000/- with the Prothonotary & Senior Master of this Court is concerned, we are of the view that this aspect has to be proved by the present appellant by leading adequate evidence either in Suit No.547 of 2003 which has been filed by the Court Receiver or by any other independent proceedings as may be advised to the appellant. In the light of the order dated 28.9.2004 passed by the learned single Judge, we are of the view that no direction needs to be given to defendant No.1 to deposit the amount of Rs.62,20,00,000/- by respondent No.1.

5. As regards the consideration of the other reliefs made by the present appellant in the Notice of Motion, we are of the view that the consideration of the matter by the learned single Judge does not suffer from any infirmity warranting interference by us in appeal.

6. Appeal is disposed of accordingly.

R.M. LODHA, J.

S.A. BOBDE, J.